

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Request for an Increase
in Reimbursement of Transportation Services
for:

OAH Nos. 2010120801 and 2011010946

Trinka J.,	
	Claimant,
and	
Inland Regional Center,	
	Service Agency.

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on May 19, 2011.

Delores J., claimant's mother, represented claimant Trinka J., who was not present at the fair hearing.

Jennifer Cummings, Program Manager, Fair Hearings and Legal Affairs, represented the Inland Regional Center.

On May 19, 2011, the matter was submitted.

ISSUES

1. Should the regional center increase its funding of claimant's transportation services?¹

¹ Claimant's Fair Hearing Requests identified several issues, but on March 29, 2011, the parties stipulated that the only issues remaining for hearing in the consolidated cases were the transportation costs, request for specialized equipment and physical fitness programs. Before the hearing began, the parties resolved the issue regarding the request for specialized equipment. During the hearing claimant withdrew her Fair Hearing Request regarding the physical fitness programs.

FACTUAL FINDINGS

Jurisdictional Matters

1. On December 16, 2010, and January 2011² claimant's mother, Delores J., on behalf of Trinkia J., requested a fair hearing in which, inter alia, claimant appealed from IRC's determination that she was not eligible for an increase in the reimbursement of her transportation services. Claimant was thereafter served with notice of this hearing.

2. On May 19, 2011, the record in the fair hearing was opened, the matters were consolidated, documentary evidence was introduced, sworn testimony and closing arguments were given, the record was closed, and the matter was submitted.

3. During the hearing claimant requested a continuation of the hearing based on her assertion that she had not received IRC's exhibit packet of the documents IRC intended to introduce at hearing. IRC demonstrated that it had timely served the documents and claimant's request was denied.

The Lanterman Act

4. The Lanterman Developmental Disabilities Services Act (the Lanterman Act) was enacted more than two decades ago. The Lanterman Act is found at Welfare and Institutions Code section 4500 *et seq.* Welfare and Institutions Code section 4501 sets forth the purpose of the Lanterman Act. It states:

"The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities."

5. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" in part as follows:

² Claimant did not date her January Fair Hearing Request which was received by IRC on January 6, 2011.

“‘Developmental disability’ means a disability which originates before an individual attains age 18, continues, or can be expected to continue indefinitely, and constitutes a substantial disability . . . As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.”

6. The State Department of Developmental Services (DDS) is responsible for implementing laws related to the care, custody and treatment of persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) To comply with this mandate, the DDS contracts with private non-profit community agencies, known as “regional centers,” to provide the developmentally disabled with “access to the services and supports best suited to them throughout their lifetime.” (Welf. & Inst. Code, § 4620.)

7. Welfare and Institutions Code section 4512, subdivision (b) defines “services and supports” as:

“[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.”

8. Welfare and Institutions Code section 4646, subdivision (a), provides in part:

“It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. . . .”

Regional Centers

9. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

A regional center must develop and implement an "individual program plan" (IPP) for each consumer which specifies the consumer's needs for services and supports. These services and supports must appear in statements of goals and also specific time-limited objectives in the IPP. Goals and objectives "shall be stated in terms that allow measurement of progress or monitoring of service delivery." (Welf. & Inst. Code, § 4646.5, sub. (a)(2).)

The IPP must be reviewed, reevaluated and modified no less than once every three years by a planning team composed of regional center staff, the consumer, and (where appropriate) the consumer's parents, to ascertain whether the planned services have been provided and if the objectives have been fulfilled within the time specified in the IPP. (Welf. & Inst. Code, § 4646.5, sub. (b).)

10. Welfare and Institutions Code section 4646, subdivision (d) provides:

"Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting."

11. Welfare and Institutions Code section 4648 states in part:

"In order to achieve the stated objectives of a consumer's individualized program plan, the regional center shall conduct activities including, but not limited to all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined by the consumer's individual program plan...

(2) . . . Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer . . . which the regional center and

consumer or, where appropriate, his or her parent, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan."

...

(6) The regional center and the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative... shall, pursuant to the individual program plan, consider all the following when selecting a provider of consumer services and supports:

(A) A provider's ability to deliver quality services or supports which can accomplish all or part of the consumer's individual program plan.

(B) A provider's success in achieving the objectives set forth in the individual program plan.

(C) Where appropriate, the existence of licensing, accreditation, or professional certification.

(D) The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected. In determining the least costly provider, the availability of federal financial participation shall be considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports.

(E) The consumers, or, where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers.

12. California recently experienced an unprecedented budget shortfall. Every area of state government was impacted by this fiscal crisis, including the DDS. Section 4648.35 was added to Welfare and Institutions Code in an effort to meet the economic predicament. It provides:

"Effective July 1, 2009, at the time of development, review, or modification of a consumer's individual program plan (IPP) or individualized family service plan (IFSP), all the following shall apply to a regional center:

"(a) A regional center shall not fund a private specialized transportation services for an adult consumer who can safely access and utilize public transportation, when that transportation is available.

“(b) A regional center shall fund the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's IPP or IFSP.

“(c) A regional center shall fund transportation, when required, from the consumer's residence to the lowest-cost vendor that provides the service that meets the consumer's needs, as set forth in the consumer's IPP or IFSP. For purposes of this subdivision, the cost of a vendor shall be determined by combining the vendor's program costs and the costs to transport a consumer from the consumer's residence to the vendor.

“(d) A regional center shall fund transportation services for a minor child living in the family residence, only if the family of the child provides sufficient written documentation to the regional center to demonstrate that it is unable to provide transportation for the child.”

Evidence Introduced at Hearing

13. IRC's Individual Program Plan and Annual Review documented that Trinka J., is a 25-year-old female who qualifies for regional center services because of her diagnosis of having an unspecified delay in development with the etiology being sensorineural hearing loss. Trinka has profound hearing loss that is not correctable. She resides with her parents and attends a day program where her job duties include sorting. Trinka grasps objects with both hands but due to her diagnosis of DOOR syndrome, she has difficulty manipulating objects with her fingers. She has complete bowel and bladder control and performs personal-care activities independently. She requires constant supervision to prevent injury and harm. Trinka does not attend school. She attends the day program with the hope to become part of a supported employment program.

14. Trinka's Client Development Evaluation Report (CDER) was introduced. CDER has a rating score of 1 to 5, with a 1 indicating a most dependent consumer and a score of 5 indicating a most independent consumer. A CDER evaluation is based largely upon the report of family members and observations of the Consumer Services Coordinator. Trinka received scores of 5.00 for practical independence, 3.60 for personal/social skills, 5.00 for challenging behaviors, 5.00 for integration level, and 4.14 for well-being. Trinka's scores indicated a relatively independent consumer.

15. IRC introduced an excerpt of its Agency Policies which pertain to the purchase of transportation services. That policy provided in part:

“Inland Regional Center may purchase transportation services that will facilitate the services identified in the consumer's individual program plan/I SSP only when these services are not provided by generic resources, are not the routine responsibility of the consumer or his family [sic]....

“...When a choice is available between public and private service or voucher, public transportation will be purchased as it is more cost effective and allows consumers to interact with the general public.

“In considering the purchase of transportation services, Inland Regional Center will proceed from the least restrictive to the most restrictive method of transportation suitable for the consumer. In order of consideration the transportation options are:

“1. The fixed route bus system....

“2. Paratransit...

“3. Vendor and pay the most competent competitively priced available vendor.”

16. California Code of Regulations, title 17, section 58542 provides in part:

(c) Transportation... shall be paid at a rate or fair not to exceed the amount charged to the general public for the same service.

...

(e) Persons who are vendored as miscellaneous service providers by the regional center to purchase... transportation services for regional center consumers... shall be paid at a rate not to exceed the rate charged to the general public for those services...

17. California Code of Regulations, title 17, section 58543 provides in part:

(a) A regional center may enter into a contract for the provision of transportation service in which the rate of payment, including the rate for transportation aid services, if any, is based upon a standard rate schedule (SRS)...

(1) The SRS shall be established by the regional center based upon the cost effectiveness of providing specific transportation services....

18. Tiki Thompson, IRC Program Manager for Resource Development and Transportation, testified that IRC currently funds \$12 per day for transportation services with claimant's mother being the authorized vendor to provide those services. \$12 per day was established as the reimbursement rate because, as required by the regulations, that was the rate IRC would pay for public transportation in the county where claimant resides. This amounts to a reimbursement to claimant of \$240 per month. Alternatively, if IRC established claimant's mother as a transportation family service and funded claimant's transportation based on mileage reimbursement, the maximum amount IRC would be

allowed to reimburse claimant would be \$181.50.³ According to Ms. Thompson, because IRC is currently reimbursing claimant based on the daily public transportation rate, she is receiving the maximum amount IRC can fund for transportation reimbursement.

19. Ms. Thompson also testified that because claimant's day program is in another county, using public transportation would require her to transfer to a different county's transportation system which would add an additional \$3.75⁴ fare each way to the \$12 per day fare, for a total transportation cost of \$19.50, or \$21.50 using \$4.75, neither of which were costs that IRC was authorized to fund.

20. Claimant's mother testified that they chose the day program in the other county as it was the most appropriate to meet claimant needs, one of the reasons being that it provided sign language interpreters on site. No evidence was introduced refuting that testimony. Based upon Ms. Thompson's testimony, claimant's mother testified that she would be willing to accept the private transportation "offered by Ms. Thompson in her testimony"⁵ provided that the private transporter insures that claimant is returned home by 3 PM in order to attend her many doctor and therapy visits.

21. Ms. Thompson testified that when private transporters are used, several IRC clients will be onboard the van and IRC cannot guarantee that claimant will be home by 3 PM. Claimant's mother testified that this was the reason she was the authorized vendor for transportation, as she could ensure her child's return home on time.

22. Claimant's mother testified that when she calculated her round-trip mileage, she determined that \$12 per day is insufficient to cover her costs. Claimant's mother testified that using the two public transportation systems would amount to a reimbursement of \$465 per month which would be more than simply reimbursing her transportation costs.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. "Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court; except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

³ It was unclear from the testimony how this amount was derived.

⁴ Claimant's mother testified the fare was \$4.75, which IRC conceded but which Ms. Thompson testified did not change her determination that either fare was not a fare that IRC could fund.

⁵ Ms. Thompson did not "offer" a private transporter; she testified that the costs of providing a private transporter would be less than the transportation rates currently funded.

The Lanterman Act

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with a qualifying developmental disability, regardless of age or degree of handicap, and at each stage of life. The purpose of the Lanterman Act is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. Relevant provisions of the Lanterman Developmental Disabilities Services Act are included in the Factual Findings.

Appellate Authority

4. The purpose of the Lanterman Act is to provide a “pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life.” (Welfare and Institutions Code section 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

5. The Lanterman Act enumerates legal rights of persons with developmental disabilities. A network of 21 regional centers is responsible for determining eligibility, assessing needs and coordinating and delivering direct services to individuals with developmental disabilities and their families within a defined geographical area. Designed on a service coordination model, the purpose of the regional centers is to “assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.” The Department of Developmental Services allocates funds to the centers for operations and the purchasing of services, including funding to purchase community-based services and supports. (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 682-683.)

Evaluation

6. As noted above, the Lanterman Act authorizes regional centers to fund necessary services and supports “toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” The burden was on claimant to establish that the transportation services she seeks are necessary to this end. Although IRC asserted that the regulations prevent it from funding more than \$12 per day, the evidence established that this would only provide the public transportation rate for one of the two public transportation

services necessary to deliver claimant to her day program. The total cost of utilizing public transportation to transport claimant to her appropriate day program, which involves using two different county's public transportation services, amounts to \$21.50 per day. Nothing in any of the documents introduced at hearing prevents IRC from using the public transportation services of two different counties. This is especially so with a regional center like IRC which services two counties, making it is highly likely that many of its clients will live in one county and receive services in another county. Absolutely no evidence was introduced to demonstrate that claimant's day program is not appropriate. In fact, given her unique needs, the evidence demonstrated that she has chosen the most appropriate day care. The evidence established that Trinka needs increased funding of her transportation services for the purposes indicated in the statute. Accordingly, claimant's request that the service agency fund an increase in her transportation services is granted.

ORDER

Claimant Trinka J.'s appeal from the Inland Regional Center's determination not to fund an increase in the funding of her transportation is granted. IRC shall fund her transportation services at a rate of \$21.50 per day.

DATED: _____

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.